

## COMMENT



### Human Rights: Confronting Bangkok and Beijing

Being human, it seems, is not enough. Certain rights are denied to certain humans — because, for example, they happen to live in societies in which the individual is to be subordinated to the community, or where group rights or the ‘right to development’ is accorded priority.

How ought one to approach the adoption of this apparently relativist view of human rights evident in the Bangkok Declaration and Beijing’s ‘white paper’ *Human Rights in China*? The question is explored (from different perspectives) in two of the articles in this issue of the *Journal*.

The following brief remarks explore the tactic which is gaining ground in the developing world. It lies not merely in according priority to group rights or the ‘right to development’ (which is not, of course, a new posture), but in asserting an apparently relativist stance that, at least on its face (and in its design), seems ineluctably to amount to the same thing.

In other words, what was formerly conceived to be an essentially *communitarian* claim (against the individualism inherent in liberal theory) appears now to be clothed in *relativist* garments. The most charitable interpretation of the Beijing/Bangkok line is that it constitutes an honest statement of the plausible claim that cultural or economic circumstances (or both) do not support political liberty or, at least, make them contingent upon certain changes in social life. I find it hard to be so magnanimous.

But if, as seems to me to be the case, the Bangkok/Beijing position is not really a relativist one, these arguments may be misplaced. They do, of course, advance, mostly implicitly, another claim, an ostensibly communitarian one, which seeks to undermine the individualism that allegedly haunts liberal (and principally Western) notions of political (but not, apparently, economic) rights. I need to say a little about this line of attack.

Relativism and communitarianism are both powerful ideas which have exerted considerable influence in moral, political, and legal theory. They set out to inflict damage on the concept of rights in general, and human rights, in particular. And they facilitate the case for subordinating political rights to socio-economic rights by proclaiming the priority of economic rights, by suggesting that the latter are somehow more fundamental, or even universal.

And here lies the paradox. The Bangkok/Beijing move is neither genuinely relativist (for, conveniently, it asserts the universality of economic rights), nor genuinely communitarian (for many of its claims — notwithstanding a commitment to ‘group rights’ — are individualistic). I ignore the possibility that the Chinese document is driven by some sort of Marxist ideology.

Take the following widely-quoted passage from the *Bangkok Declaration*:

while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional peculiarities and various historical, cultural and religious backgrounds ...

Or a similar assertion from *Human Rights in China*:

Owing to tremendous differences in historical background, social system, cultural tradition and economic development, countries differ in their understanding and practice of human rights ... Consideration should be given to the differing views on human rights held by countries with different political, economic and social systems, as well as different historical, religious and cultural backgrounds.

They resonate relativism. But they both play their hand. They lament, of course, the neglect of group rights or the right to development:

*Bangkok:*

Noting the progress made in the codification of human rights instruments, and in the establishment of international human rights mechanisms, while expressing concern that these mechanisms relate mainly to one category of rights.

*Beijing:*

It is a simple truth that, for any country or nation, the right to subsistence is the most important of all human rights.

Their trump card, however, is the strong non-interference, sovereignty, or statist claim. Neither document, despite their predictable (and unexceptionable) support for economic rights and development, adduces genuine communitarian or cultural relativist arguments.

Ought we to be concerned about this new strategy which denies human rights on purportedly relativist or historicist grounds? I think we should be, even if we doubt (as some do) the authenticity of the Bangkok/Beijing posture, and cynically suspect subterfuge. Suppose for a moment that it represents a sincere concern to resist the neo-imperialist imposition of Western values (aka civil and political rights-talk). If that indeed is the demon to be exorcised, we shall then need to deploy arguments that either seek to show that no such devil exists or (more likely) that, even if it does, it is a kindly, well-meaning creature, dedicated to improving the welfare of the downtrodden and dispossessed. The 'interdependence and indivisibility' of political and economic rights (the *Bangkok Declaration*'s own phrase) may also be postulated in order to deflect that attack.

This is grossly to oversimplify the question, but may suggest the kind of engagement that needs to be pursued. There remains also the nagging unease that, while the inchoate relativism that emerges, at least from these sources, is employed to subordinate political rights to (the less easily vindicated?) economic rights — and so permit oppressive regimes to flourish — it rarely finds expression as an attack on *economic* rights. In other words, those governments (for it is they, not their victims) who rely on ethical or cultural relativism manage somehow to find political rights less culturally congenial than economic ones.

A plague on both houses? Adherents, principally in the West, of liberalism need to acknowledge the genuine importance of local culture. And relativists and communitarians (if such they be) must accept the need for enhancing the cultural legitimacy of human rights norms.

At the heart of the Bangkok/Beijing hostility to political rights is a statist logic that operates to resist aspirations of universal acceptance of human rights. Cynically to employ the claim of relativism (or contextualism) and communitarianism as camouflage for executive self-preservation and privilege is repugnant.

Nothing I have sketched above is intended to detract from the importance of economic, social, and cultural rights (or, indeed, the third generation rights of solidarity). Far from it. The real question is whether, in the championing of economic, social, and cultural rights, at the expense of political rights, human suffering is indeed diminished.

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## The Purpose of Legal Education

In June 1994 The Lord Chancellor's Advisory Committee on Legal Education and Conduct published a consultation paper<sup>1</sup> about legal education that is of great interest to legal educators everywhere including Hong Kong. It makes a number of suggestions for reform to the initial stage of legal education and raises many legal-education issues. The first and most fundamental issue it raises is one which has bedeviled legal education for a long time: what should be the purpose of legal education?

The authors of the paper seem to suggest dual purposes: legal education should train students to become practising lawyers; and legal education should provide an educational foundation for a variety of careers, not just law practice.

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<sup>1</sup> Review of the Lord Chancellor's Advisory Committee on Legal Education and Conduct, *Legal Education, Consultation Paper: The Initial Stage* (London, June 1994).